

TESTIMONY

Before the

House Committee on Veterans' Affairs

Regarding

“Protecting the Rights of Those Who Protects Us: Public Sector Compliance with the  
Uniformed Services Employment and Reemployment Rights Act (USERRA) and  
Improvements to the Servicemembers Civil Relief Act (SCRA)”

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Chairman Smith, Ranking Member Evans, members of the Committee, I thank you for the opportunity the National Consumer Law Center<sup>1</sup> has to provide comments to you today.

On behalf of our many low income clients who are current members of the armed forces, we commend you for your work last year updating and expanding the Soldiers and Sailors Civil Relief Act. The new Servicemembers Civil Relief Act is a significant improvement over the former law in many ways. In particular, the new ability of servicemembers to terminate vehicle leases, and the expanded ability to avoid residential leases, are important so that families are not driven to financial ruin by military service.

We also commend the committee for this current endeavor to further improve the Act passed last year. As with any major work, there are some ambiguities in the new law and we encourage the committee's efforts to address them. We support all of the provisions of the draft bill that we have seen. In this testimony we seek to accomplish two goals, first to highlight and specifically support several of the provisions, and second to make specific suggestions regarding improvements – all entirely consistent with the focus and provisions already included in the draft bill.<sup>2</sup>

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<sup>1</sup> **The National Consumer Law Center** is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with legal services, government and private attorneys around the country, representing low-income individuals, and with military attorneys representing low income members of the military, who request our assistance with the analysis of credit and other consumer transactions to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen numerous examples of violations of existing law, difficulties in dealing with the dual pressures of serving in the military and maintaining obligations originated in private life. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. We also publish and annually supplement a series of eighteen practice treatises, including the forthcoming latest edition of *Fair Debt Collections* (5<sup>th</sup> ed. 2004) in which credit issues facing active duty military are explored fully in Chapter 9. Although this testimony is delivered by Margot Saunders, it is written by her colleague, Carolyn Carter.

<sup>2</sup> While it is outside the jurisdiction of this Committee, we cannot miss this opportunity to encourage all members of this Committee to look for opportunities to address the serious problem of exorbitantly priced credit facing *active military personnel*. As detailed in the recent report, *In Harm's Way – At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans*, National Consumer Law Center, May, 2003, [http://www.consumerlaw.org/initiatives/content/report\\_military.pdf](http://www.consumerlaw.org/initiatives/content/report_military.pdf) active duty military service members are particularly vulnerable to high-cost lending scams. Loans with interest rates in the 400 to 600% range are standard, while a check or the title to a car is kept as security to ensure the loans are repaid. Quite often, the loans are repaid by rolling them over into new loans ten or eleven times, increasing the cost of the original loan exponentially. The lenders providing this high priced credit are deliberately profiting from the lack of sophistication and the financial desperation of America's service members as they struggle to make ends meet.

Military leaders are concerned that widespread financial stress in the ranks, a documented problem many of them partly attribute to scams, may be impacting readiness. The Defense Department's March 2002 *Report on Personal and Family Financial Management Programs* states that more than half of all service members in the lowest six pay grades – the six grades that constitute nearly three-quarters of active-duty military – describe themselves as having at least occasional difficulty (and often worse) making ends

## Protection Against Negative Credit Reports

Currently the Act – in Section 108 – appropriately prohibits negative credit reports and other similar adverse actions against servicemembers who exercise their rights under the Act. This protection is extremely important. Servicemembers should not return home from active duty to find their credit ruined. However, to be fully effective the protection should be broadened in two ways.

First, as the Act recognizes in numerous provisions, the servicemember's dependents can use many of the same protections under the Act that servicemembers can. For example, one of the amendments in the draft bill would make it clear that if a servicemember and a dependent have jointly signed a residential lease, and the servicemember is assigned overseas, the lease can be cancelled as to both of them. Section 108 makes it clear that the landlord cannot make an adverse credit report against the servicemember because of the lease cancellation, but it does not explicitly prohibit the landlord from making an adverse credit report against the co-signer. We urge that Section 108 be amended to make it clear that adverse credit reports are prohibited not only against servicemembers but also against dependents who exercise rights under the Act. If creditors were allowed to threaten a servicemember's dependent with a negative credit report, it would deter both the dependent and the servicemember from exercising these important rights.

Second, the prohibition against negative credit reports and other adverse actions currently applies only when the servicemember seeks or obtains "a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability." This language covers many exercises of rights under the Act, but the list itself can be interpreted to be potentially limited to the specific terms included. A creditor could have an argument that *its* negative credit report was not based on one of the listed events. Did Congress intend to allow negative credit reports for the exercise of *some* rights under the Act? We think not, and we urge the committee to amend Section 108 to make this crystal clear.

To address both of these concerns, we suggest that the preliminary language of Section 108 be rewritten to read:

The exercise by a servicemember or a dependent of a  
servicemember of any right under this Act shall not itself (without regard  
to other considerations) provide the basis for any of the following:

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meet. The Defense Department's report describes how many young enlisted members do not understand the consequences of acquiring debt or paying off debts at high interest rates. Easy availability of credit and credit cards make it possible for members to live beyond their means for a while, but the short-term extravagance then creates a crisis to pay off bills, which drives members to the predatory lenders.

To ensure these goals are accomplished fully, we also suggest that “servicemember” be replaced with “servicemember or dependent” in subsections 108(1), (2), (2)(C), (3), and (4).

### **Clear Coverage of Enlisted Personnel**

There should be no question that those who volunteer for military service should be entitled to the same financial protections as those who are called up from the Reserves or National Guard. The current Act does not do this as cleanly and clearly as it should.

The draft bill proposes to amend Section 305, the provision that gives servicemembers the right to break residential or motor vehicle leases if they are shipped overseas, by adding a definition of “military orders.” We support the intent behind this amendment, but urge that the intent behind this amendment be furthered in two ways:

First, it should be clear that the Act covers all servicemembers, whether reservists who have been called to active duty, or enlistees. To accomplish this, the words “enlistment contract” must be added to the definition. Second, the clarification of how a servicemember can provide a simple and straightforward method to document the servicemember’s active duty and location should be included in all applicable sections. To accomplish this, in addition to amending Section 305, a similar clarification is necessary to be added to Section 207, which addresses the maximum rate of interest on debts incurred before military service.

For example, Section 207(b)(1) and (2) currently require a servicemember to give the creditor “a copy of the military orders calling the servicemember to military service and any orders further extending military service.” We urge the committee to add the following definition:

Sec. 207(b)(3): The term “military orders calling a servicemember to military service” as used in this section means official military orders, an enlistment contract, or any notification, certification, or verification from the servicemember’s commanding officer, that documents the servicemember’s current or future duty status.

This language makes it clear that the interest rate protection extends to enlistees who have enlistment contracts rather than orders calling them up. The language also reduces the paperwork burden on commanding officers by allowing an enlistee to provide a copy of his or her enlistment contract instead of having to get a certification from the commanding officer.

### **Protection Against Waivers**

The Act’s protection against waivers is extremely important. If waivers of rights under this law were allowed, waiver language would be a routine part of the fine print of every contract and lease signed in the United States, and the Act would be a dead letter.

The main protection against waivers is the existing law's requirement that in most cases the waiver must be signed after the servicemember's period of active duty starts. For example, if a reservist buys a home before being called to active duty, the mortgage cannot waive the Act's protections against foreclosure. After being called to active duty, however, the reservist can waive these protections.

The draft bill adds an additional protection by requiring that any waiver be in at least 12-point type and be in a separate document. We support this amendment, because it is an additional protection against an unknowing waiver of these important rights.

We also urge the committee to tighten up the protection against waiver of the right to cancel a residential or vehicle lease. Under the Act, a servicemember who signs a lease while on active duty has the right to cancel it upon receiving orders for a permanent change of station. The Act should allow the servicemember to waive this right not at any time during the period of active duty, but only after the orders for the permanent change of station. Otherwise, vehicle and residential leases offered to servicemembers who are on active duty will include clauses waiving the right to cancel. This would defeat Congress' purpose in adopting this protection. We suggest that the following language be added to Section 107:

Sec. 107(e): The right to terminate a residential or motor vehicle lease under Sec. 305 because of a permanent change of station may be waived only in a writing that complies with subsection (c) of this section, and only after the servicemember has received orders for a permanent change of station.

## **Protections in Court and Administrative Proceedings**

We support the draft bill's clarification of the meaning of "judgment," so that it is clear that it includes any order or ruling, whether final or temporary. The existing language could be interpreted to give courts and administrative agencies authority to protect servicemembers only from final judgments. Since preliminary rulings can, for all practical purposes, determine the outcome of the case, they can be just as important as the final judgment. In addition, in many administrative proceedings the tribunal issues orders rather than judgments. The use of the term "judgment" in the existing law, without a broad definition, threatens to undercut the rights of a servicemember who is a party to a court or administrative proceeding.

We also support the draft bill's clarification that a servicemember has a right to a stay of a court case under Section 202 of the Act whether the servicemember is the plaintiff or the defendant. Many reservists have been called to active duty on as little as a week's notice. If the reservist is a plaintiff in a lawsuit that is scheduled for trial, the reservist should be able to get the trial postponed. Unfortunately, the current provision for a stay of proceedings (Section 202(a)) states that it applies when the "defendant" is in

military service. A later part of the same section, however, states that a stay may be sought when it appears that the servicemember is unavailable to “prosecute or defend” the action. This language suggests that it was the intent of Congress that the provision apply whether the servicemember is the plaintiff or defendant. We urge the committee to clarify this ambiguity by adopting the proposed amendment.

We also suggest an additional provision to clarify that the intended protections of Title II of the Act are *supplemental to rather in replacement of* existing legal protections under other laws. The protections against evictions, repossession, and foreclosure, explicitly preserve other rights in other laws – which is very important. However, there is no similar assurance that the benefits of other laws apply uniformly to servicemembers who are caught up in court or administrative proceedings when they enter active duty. We urge the committee to adopt an amendment that would make it clear that the rights created by Title II of the Act are in addition to, rather than in place of, any rights the servicemember has under existing state law. For example, Section 201(g) allows a servicemember to ask that a judgment be reopened by filing an application within 60 days after release from active duty, but under general procedural rules in most states a person can ask that a judgment be reopened up to one year after it was rendered. The proposed amendment would make it clear that a servicemember has the option of applying within either the 60-day period or the period of time allowed by the ordinary rules of court. The language we propose is:

Sec. 201(i) Preservation of Other Remedies and Rights. The remedies and rights provided under this title are in addition to and do not preclude any rights and remedies otherwise available under law to the person claiming relief under this title.

## **Conclusion**

On behalf of our low income clients in the armed services, we very much appreciate the opportunity to provide testimony to you today. We are happy to continue working with your staff and help facilitate the effective use of the Act in any way that we are able.